

House File 2461 - Introduced

HOUSE FILE 2461

BY ISENHART

A BILL FOR

1 An Act relating to water quality and soil conservation efforts,
2 including related powers and duties of commissioners of
3 soil and water conservation districts, county boards of
4 supervisors, county treasurers, the state soil conservation
5 committee, the department of agriculture and land
6 stewardship's division of soil and water conservation, and
7 the attorney general.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

SOIL LOSS LIMITS

3 Section 1. Section 161A.44, unnumbered paragraph 1, Code
4 2016, is amended to read as follows:

5 The commissioners of each soil and water conservation
6 district shall, ~~with approval of and within time limits set by~~
7 ~~administrative order of the state soil conservation committee,~~
8 adopt any reasonable ~~regulations as are~~ regulation deemed
9 necessary to establish a soil loss limit ~~or limits~~ for the
10 district, ~~and~~ provide for the implementation of the soil loss
11 ~~limit or limits,~~ and may subsequently amend or ~~repeal their~~
12 ~~regulations~~ rescind a regulation as they deem necessary.
13 However, a soil loss limit shall not exceed five tons per acre
14 occurring within any twelve-month period. The committee shall
15 review the soil loss limit regulations adopted by the ~~soil and~~
16 ~~water conservation districts~~ commissioners at least once every
17 five years, and shall recommend changes in the regulations ~~of a~~
18 ~~soil and water conservation district~~ which the committee deems
19 necessary to assure that the district's soil loss limits are
20 reasonable and attainable. The adoption, amendment, or repeal
21 of a regulation shall not take effect until after a public
22 hearing on the matter is conducted pursuant to section 161A.45.
23 The commissioners may do any of the following:

24 Sec. 2. Section 161A.45, Code 2016, is amended to read as
25 follows:

26 161A.45 Submission of regulations to committee — hearing.

27 1. Regulations A regulation, other than a regulation
28 establishing a soil loss limit, which the commissioners propose
29 to adopt, amend, or repeal shall be submitted to the committee,
30 in a form prescribed by the committee, for its approval. The
31 committee may approve ~~the regulations~~ any regulation described
32 in section 161A.44 as submitted, or with ~~amendments~~ any related
33 amendment as it the committee deems necessary.

34 2. The commissioners shall, after any necessary committee
35 approval, publish notice of a hearing on ~~the~~ any proposed

1 ~~regulations~~ regulation, as including a regulation approved by
2 the committee, in a newspaper of general circulation in the
3 district, setting a date and time not less than ten nor more
4 than thirty days after the publication when a hearing on the
5 proposed ~~regulations~~ regulation will be held at a specified
6 place. The notice shall include the full text of the proposed
7 ~~regulations~~ regulation or shall state that the proposed
8 ~~regulations are~~ regulation is on file and available for review
9 at the office of the affected ~~soil and water conservation~~
10 district.

11 Sec. 3. Section 161A.46, Code 2016, is amended to read as
12 follows:

13 **161A.46 Conduct of hearing.**

14 At the hearing, the commissioners or their designees
15 shall explain, in reasonable detail, the reasons why the
16 proposed adoption, amendment, or repeal of ~~the regulations a~~
17 regulation described in section 161A.44 is deemed necessary or
18 advisable. Any landowner, or any occupant of land who would
19 be affected by the ~~regulations~~ proposed regulation, shall
20 be afforded an opportunity to be heard for or against the
21 proposed regulations. At the conclusion of the hearing, the
22 commissioners shall announce and enter of record their decision
23 whether to adopt or modify the proposed ~~regulations~~ regulation.
24 Any modification, other than establishing a soil loss limit,
25 must be approved by the committee, which may at its discretion
26 order the commissioners to republish the ~~regulations~~ regulation
27 and hold another hearing in the manner prescribed by this
28 chapter.

29 Sec. 4. Section 161A.47, Code 2016, is amended to read as
30 follows:

31 **161A.47 Inspection of land on complaint — administrative**
32 **order.**

33 1. a. The commissioners shall inspect or cause to be
34 inspected any land located within the district to ~~determine~~
35 find if ~~land is being damaged by sediment, from~~ there exists

1 credible evidence of significant soil loss caused by erosion
2 occurring on neighboring that land in excess of the limits
3 established by the district's soil erosion control regulations
4 or neighboring land. ~~If the land is privately owned, the~~ The
5 commissioners shall make or cause to be made the inspection,
6 ~~upon receiving a~~ under any of the following circumstances:

7 (1) Receipt of a written complaint signed by an owner,
8 lessee, or occupant of land claiming that the owner's or,
9 lessee's, or occupant's land is being damaged by sediment
10 erosion occurring on neighboring land. ~~If the land is subject~~
11 ~~to a public interest, the commissioners shall make or cause to~~
12 ~~be made the inspection upon a~~

13 (2) Receipt of a written complaint by any person, if the
14 complaint contains allegations or information that would cause
15 a reasonable person to conclude that significant soil loss
16 caused by erosion has occurred.

17 (3) A majority vote of commissioners at an open meeting held
18 pursuant to chapter 21. ~~Land is subject to a public interest~~
19 ~~if the land is publicly held, subject to an easement held by~~
20 ~~the public, or the subject of an improvement made at public~~
21 ~~expense.~~

22 (4) In the manner provided in section 161A.61.

23 b. The commissioners shall establish criteria to determine
24 what constitutes credible evidence of significant soil loss
25 based on the soil loss limit established for the district
26 pursuant to section 161A.44.

27 2. ~~If, after the inspection, the commissioners find that~~
28 ~~sediment damages are occurring to land which is owned or~~
29 ~~occupied by the person filing the complaint or subject to a~~
30 ~~public interest, and that excess soil erosion is occurring~~
31 ~~on neighboring land~~ soil loss exceeding the soil loss limit
32 established in section 161A.44, the commissioners shall issue
33 an administrative order. The administrative order shall
34 describe the commissioners' findings, including the cause of
35 the significant soil loss, the extent to which the soil loss

1 exceeds the soil loss limit, the location of the erosion, and
 2 whether land has been damaged by soil loss due to erosion
 3 occurring on neighboring land. The administrative order
 4 shall be delivered to the persons responsible for causing the
 5 significant soil loss, including each landowner or landowners
 6 of record, lessee of the land, and to the occupant of the land,
 7 if known to the commissioners. The order shall describe the
 8 land and state as nearly as possible the extent to which soil
 9 erosion on the land exceeds the limits established by the
 10 district's regulations. Upon request, the commissioners shall
 11 deliver a copy of the administrative order to the owner of any
 12 land damaged by erosion occurring on neighboring land. The
 13 administrative

14 3. ~~The order shall be delivered either by personal service~~
 15 ~~or by restricted certified mail to each of the persons to whom~~
 16 ~~it is directed, and shall.~~

17 3. The administrative order shall establish a compliance
 18 period as follows:

19 a. In the case of erosion occurring on the site of any
 20 a construction project or similar undertaking involving the
 21 removal of all or a major portion of the vegetation or other
 22 cover, and exposing bare soil directly to water or wind, state
 23 a time not more than five days after service or mailing of
 24 the notice of the order when work necessary to establish or
 25 maintain all erosion control practices must be commenced, and a
 26 time not more than thirty days after service or mailing of the
 27 notice of the order when the not later than five days after the
 28 administrative order has been delivered. The work is to must
 29 be satisfactorily completed not later than thirty days after
 30 the administrative order has been delivered.

31 b. ~~In all other cases, state a time not more than six~~
 32 ~~months after service or mailing of the notice of the order,~~
 33 ~~by which work needed necessary to establish or maintain the~~
 34 all necessary soil and water conservation practices or erosion
 35 control measures practices must be commenced, and a time not

1 ~~more than one year after the service or mailing of the notice~~
2 ~~of the order when the work is to be satisfactorily completed~~
3 ~~and satisfactorily completed not later than one year after~~
4 ~~the administrative order has been delivered,~~ unless the
5 requirements of the administrative order are superseded by the
6 provisions of section 161A.48.

7 Sec. 5. Section 161A.48, subsection 2, Code 2016, is amended
8 to read as follows:

9 2. Evidence that an application for cost-share or other
10 public moneys, from a source or sources having authority to
11 pay a portion of the cost of work needed to comply with an
12 administrative order issued pursuant to section 161A.47, has
13 been submitted to the proper officer or agency constitutes
14 commencement of the work within the meaning of sections 161A.43
15 through 161A.53. The commissioners shall give preference to
16 applications which seek to comply with an administrative order
17 issued pursuant to section 161A.47.

18 Sec. 6. Section 161A.49, Code 2016, is amended to read as
19 follows:

20 **161A.49 Petition for court order Administrative order —**
21 **noncompliance.**

22 ~~The commissioners shall petition the district court for a~~
23 ~~court order requiring immediate compliance with an~~ Upon the
24 expiration of the compliance period for an administrative order
25 previously issued by the commissioners as provided in section
26 161A.47, if the person to whom the order is directed shall be
27 deemed to be in noncompliance if any of the following apply:

28 1. The work necessary to comply with the administrative
29 order ~~is~~ has not commenced on or before the date specified
30 in such order, or in any supplementary order subsequently
31 issued as provided in section 161A.48, ~~unless.~~ However,
32 this subsection does not apply if, in the judgment of the
33 commissioners, the failure to commence or complete the work
34 as required by the administrative order is due to factors
35 beyond the control of the person or persons to whom such order

1 is directed and the person or persons can be relied upon to
2 commence and complete the necessary work at the earliest
3 possible time.

4 2. ~~Such~~ The work is not being performed with due diligence,
5 or is not satisfactorily completed by the date specified in
6 the administrative order, or when completed does not reduce
7 soil erosion from ~~such the~~ land below the ~~limits~~ soil loss
8 limit established ~~by the soil and water conservation district's~~
9 regulations in section 161A.44.

10 3. The person or persons to whom the administrative order is
11 directed ~~advise~~ has advised the commissioners that they do not
12 intend to commence or complete such work.

13 Sec. 7. NEW SECTION. 161A.49A Administrative order —
14 referral or petition to enforce.

15 1. a. Upon the expiration of the compliance period
16 described in sections 161A.47 and 161A.48, the commissioners
17 shall enforce the administrative order against a person who
18 is deemed to be in noncompliance under section 161A.49 by
19 referring the matter to any of the following:

20 (1) The board of supervisors of a county in which the land
21 causing the erosion is located.

22 (2) The attorney general pursuant to section 161A.6.

23 b. The referral shall include a copy of the administrative
24 order and other information required by the recipient.

25 2. The commissioners shall notify any person whose land
26 is damaged by erosion occurring on neighboring land that the
27 compliance period has expired. The person may petition the
28 board of supervisors of the county in which the land causing
29 the erosion is located to take action necessary to enforce
30 the administrative order. The petition shall include a copy
31 of the administrative order and other information required by
32 the board. A copy of the petition must be delivered to the
33 commissioners who issued the administrative order.

34 3. A board of supervisors receiving a referral or petition
35 under this section shall do any of the following:

1 a. Take action necessary to enforce compliance with the
2 administrative order. Upon completion of board action,
3 the board shall deliver a statement to the county treasurer
4 certifying the costs of taking the action plus a penalty equal
5 to five percent of that amount, together with a copy of the
6 administrative order. The total amount due shall be assessed
7 against the property which is the subject of the administrative
8 order, shall be placed upon the county system, and shall be
9 collected in the same manner as ordinary taxes. The amount due
10 shall be a lien on the land until paid.

11 b. Refer the matter to the attorney general.

12 Sec. 8. Section 161A.50, Code 2016, is amended to read as
13 follows:

14 **161A.50 Burden — ~~court order~~ Court action.**

15 1. Upon the expiration of the compliance period for an
16 administrative order issued by the commissioners as provided in
17 sections 161A.47 through 161A.49, the commissioners, or either
18 a county board of supervisors or attorney general acting upon a
19 referral under section 161A.49A, shall petition the district
20 court to order a person deemed to be in noncompliance with
21 the administrative order under section 161A.49 to immediately
22 comply with the order.

23 2. In an action brought under ~~section 161A.49~~ subsection
24 1, the burden of proof shall be upon the commissioners to
25 show that soil erosion is in fact occurring in excess of the
26 applicable soil loss ~~limits~~ limit and that the defendant has
27 not established or maintained soil and water conservation
28 practices or erosion control practices in compliance with the
29 soil and water conservation district's ~~regulations~~ regulation.
30 With respect to construction, repair, or maintenance of any
31 public street, road, or highway, evidence that the defendant
32 has met soil erosion control standards equivalent to or
33 in excess of those currently imposed by the United States
34 government on the project or like projects involving use of
35 federal funds shall create a presumption of compliance with the

1 applicable soil loss limit.

2 3. Upon receiving satisfactory proof of the defendant's
3 noncompliance, the court shall issue an order directing
4 ~~the landowner or landowners~~ defendant to comply with the
5 administrative order previously issued by the commissioners.
6 The court may modify such administrative order if deemed
7 necessary. Notice of the court order shall be given either by
8 personal service or by restricted certified mail to each of the
9 persons to whom the order is directed, who may within thirty
10 days from the date of the court order appeal to the supreme
11 court. Any person who fails to comply with a court order
12 issued pursuant to this section within the time specified in
13 such order, unless the order has been stayed pending an appeal,
14 shall be deemed in contempt of court and may be punished
15 accordingly.

16 DIVISION II

17 EDUCATIONAL PROGRAM

18 Sec. 9. Section 161A.4, Code 2016, is amended by adding the
19 following new subsection:

20 NEW SUBSECTION. 9. The committee shall establish an
21 educational program for persons who first assume the office of
22 commissioner. The curriculum shall concentrate upon the duties
23 and powers of commissioners as described in this chapter, and
24 include recommended procedures and practices to best carry out
25 those powers and duties. The curriculum shall be administered
26 by the division according to rules adopted by the division in
27 consultation with the committee.

28 DIVISION III

29 WATER QUALITY INITIATIVES

30 Sec. 10. Section 161A.4, Code 2016, is amended by adding the
31 following new subsection:

32 NEW SUBSECTION. 8. The committee and division shall
33 establish policies that prioritize the allocation of moneys,
34 personnel, and technical expertise necessary to administer this
35 chapter and chapter 466B to support water quality initiatives

1 The commissioners must perform an inspection of land located
2 in their district after receipt of a written complaint or upon
3 a majority vote at an open meeting. After the inspection, the
4 commissioners must issue an administrative order against a
5 person if the commissioners find the loss of soil exceeds the
6 soil loss limit. The order must describe the commissioners'
7 findings, be delivered to the person responsible for causing
8 the soil loss, and establish a period for compliance with
9 the order. Evidence of compliance with the order includes
10 applying for public moneys, such as cost-share financing,
11 in order to defray a portion of the costs associated with
12 complying with the order. The bill requires the commissioners
13 to give preference to applications which seek to comply with
14 an administrative order.

15 After the compliance period expires, if no work to comply
16 with the order is being performed, the commissioners must
17 enforce the order by referring the matter to the attorney
18 general or the board in the county in which the land is
19 located. A person whose land is damaged due to neighboring
20 land's erosion may also petition the board to enforce the
21 order. If the board takes action to enforce compliance with
22 the order, the board must notify the treasurer of the costs
23 associated with taking its action. The treasurer must enter
24 an amount equal to the costs plus a 5 percent penalty on the
25 tax books, which shall be collected as ordinary taxes and
26 constitutes a lien against the property. However, the board
27 may instead refer the matter to the attorney general. The
28 commissioners, or the board or attorney general acting under
29 a referral, must petition the district court to enforce the
30 order.

31 COMMITTEE AND DIVISION — EDUCATIONAL PROGRAM FOR NEWLY
32 ELECTED COMMISSIONERS. The committee is to establish an
33 educational program for persons who first assume the office
34 of commissioner. The curriculum must include practices
35 recommended to best carry out a commissioner's powers and

1 duties. The program is to be administered by the division.
2 COMMITTEE AND DIVISION — PRIORITIZING SOIL CONSERVATION
3 EFFORTS AND WATER QUALITY INITIATIVES. The committee and
4 division are to establish policies that prioritize the
5 allocation of moneys, personnel, and technical expertise
6 to support soil conservation efforts (Code chapter 161A),
7 and water quality initiatives as sponsored by a watershed
8 management authority formed by two or more districts (Code
9 section 466B.43). The highest priority is to be given to
10 support efforts in high-priority watersheds identified by the
11 water resources coordinating council (Code section 466B.3).